

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jan Thronndson,

Complainant,

**ORDER OF DISMISSAL**

v.

Carla J. Kilpatrick,

Respondent.

On December 12, 2012, Jan Thronndson filed a Complaint with the Office of Administrative Hearings alleging that Carla J. Kilpatrick violated Minn. Stat. § 211A.02, subd. 2 by failing to accurately report expenditures and/or in-kind contributions.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on December 12, 2012, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by e-mail and United States mail to the Respondent on December 12, 2012.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a *prima facie* violation of Minn. Stat. § 211A.02, subd 2. Therefore, the Complaint is dismissed.

Based upon the Complaint, the supporting filings, and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Jan Thronndson against Carla J. Kilpatrick is **DISMISSED**.

Dated: December 20, 2012

s/James E. LaFave

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JAMES E. LAFAVE

Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

## MEMORANDUM

Complainant Jan Thronson was a candidate for Rochester City Council President in the November 6, 2012, General Election. Respondent Carla J. Kilpatrick was the Treasurer for Dennis Hanson's campaign committee. Mr. Hanson was Mr. Thronson's opponent.

The Complaint alleges that Ms. Kilpatrick either under reported expenses or failed to list in-kind contributions on the campaign financial reports required under state law.

### Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>1</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>2</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>3</sup>

### Minnesota Statutes § 211A.02, subd. 2, Information required.

Minnesota Statutes § 211A.02, subd 2 provides, as follows:

Subd. 2. **Information required.** The report to be filed by a candidate or committee must include:

- (1) the name of the candidate or ballot question;
- (2) the printed name, address, telephone number, signature, and e-mail address, if available, of the person responsible for filing the report;
- (3) the total cash on hand;
- (4) the total amount of receipts and expenditures for the period from the last previous report to five days before the current report is due;

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<sup>1</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

- (5) the amount, date and purpose for each expenditure; and
- (6) the name, address, and employer, or occupation if self-employed, of any individual or committee that during the year has made one or more contributions that in the aggregate exceed \$100, and the amount and date of each contribution. The filing officer must restrict public access to the addresses of any individual who has made a contribution that exceeds \$100 and who has filed with the filing officer a written statement signed by the individual that withholding the individual's address from the financial report is required for the safety of the individual or the individual's family.

## Analysis

The Complaint, in essence, makes two claims. First, that Ms. Kilpatrick under reported the expenses for electronic billboards or in the alternative failed to list the billboards as in-kind contributions. Second, that radio ads recorded by Mr. Hanson's daughter, but prepared and paid for by the Rochester Sales Tax Reauthorization Committee, should have been listed by Ms. Kilpatrick as an in-kind contribution to the Hanson campaign committee. Both claims will be discussed in turn.

The campaign Financial Report filed by Ms. Kilpatrick lists a \$1,700 expenditure paid to Fairway Outdoor Advertising on November 9, 2012. The Complaint alleges the true value of the billboards leased by the Hanson campaign was \$3,850. Therefore the Complaint argues that Ms. Kilpatrick under reported the expenditure by \$2,150.

In a separate Campaign Complaint, filed with the Office of Administrative Hearings, Mr. Thronson alleged Fairway Outdoor Advertising improperly charged his campaign and the Hanson campaign different rates for the use of electronic billboards.<sup>4</sup> The fact that Fairway Outdoor Advertising may have charged the two campaigns different rates for the use of electronic billboards does not mean the Hanson campaign under reported its expenditure. Ms. Kilpatrick reported payments of \$1,700 to Fairway Outdoor Advertising. The Complaint fails to allege sufficient facts to support a claim that Ms. Kilpatrick filed an inaccurate Financial Report in violation of Minn. Stat. § 211A.02, subd. 2.

The Compliant makes a separate, alternative argument. The Complaint alleges the Hanson campaign contracted with Fairway Outdoor Advertising for the use of a billboard for one week. The Complaint alleges that the charge for the lease of the billboard for one week was \$600. The Complaint then asserts the billboard ran for five weeks instead of one. The Complaint contends the Hanson campaign should either have taken steps to have the billboard taken down after one week or to have paid an additional \$2,400 for the four weeks the billboard remained up. The Complaint further alleges the Hanson campaign should have listed four weeks use of the billboard as an in-kind contribution. That argument also fails.

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<sup>4</sup> See *Jan Thronson v Fairway Outdoor Advertising*, OAH Docket No. 60-0325-30237.

The alternative argument is really just the flip side of the original one. It boils down to the fact Fairway Outdoor Advertising allegedly charged Mr. Thronson a different rate than the Hanson campaign. While that may be a violation of the Minnesota Campaign Laws on the part of Fairway Outdoor Advertising, it does not constitute a violation of Ms. Kilpatrick's reporting responsibilities under Minn. Stat. § 211A.02, subd 2.

The second claim in the Complaint concerns a radio ad recorded by Mr. Hanson's daughter. The Rochester Sales Tax Reauthorization Committee prepared and paid for the ad. The ad states that Mr. Hanson, when he was the Rochester City Council President, supported the sales tax and that the tax would fund his vision for Rochester. The Complaint argues the ad was really a promotional spot for Mr. Hanson's campaign for Rochester City Council President and should have been listed on the Financial Report by Ms. Kilpatrick as an in-kind contribution.

The ad was clearly in support of reauthorizing the sales tax, and the disclaimer stated it was prepared and paid for by the Rochester Sales Tax Reauthorization Committee. The Complaint has failed to allege sufficient facts to support the claim that the radio ad promoted Mr. Hanson's candidacy.

The Administrative Law Judge finds that the Complainant has failed to establish *prima facie* violations of Minn. Stat. § 211A.02, subd. 2 with respect to the financial reports filed by Ms. Kilpatrick. The appropriate result is dismissal of the Complaint.

**J. E. L.**